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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/674,915  | 09/30/2003  | Joseph P. Jones      | 9858-000025/COA     | 8988             |
| 28997   | 7590        | 02/24/2005           | EXAMINER            |                  |
| HARNESS, DICKEY, & PIERCE, P.L.C<br>7700 BONHOMME, STE 400<br>ST. LOUIS, MO 63105 |             |                      | PASCHALL, MARK H    |                  |
|   |             | ART UNIT             | PAPER NUMBER        |                  |
|   |             | 3742                 |                     |                  |

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                             |                  |  |
|------------------------------|-----------------------------|------------------|--|
| <b>Office Action Summary</b> | Application No.             | Applicant(s)     |  |
|                              | 10/674,915                  | JONES ET AL.     |  |
|                              | Examiner<br>Mark H Paschall | Art Unit<br>3742 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on papers filed 11-24-04.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 16-32,44-58,73-80 and 99-108 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 16-32,44-58,73-80 and 99-108 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 30 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 104,106-108 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ogden, Sr. et al. Column 3, paragraph 4, in Ogden, Sr. et al sets forth that the trigger switch 16 can be depressed for introduction of purge gas to the weld zone and the released to a second position to effect supply of both gas and electrical power to the weld zone, in a MIG gun. Should be noted that a MIG gun also develops plasma in the gas flow between the electrodes. As per claim 6 note that the trigger switch does protrude from the torch handle and therefore does enclose torch components. As per claim 8 the switch 16 in Ogden, Sr. et al does comprise the selector and the torch handle defining the stop does meet the selector and when assembled does feature a selector operating in a plurality of modes. Note that the claims define an intended use for the switch and no patentable weight can be given to an intended use clause in view of the present, "broad", claim language.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 16-20, 22-31, 44-48, 50-53, 55-58, 73-80 and 99-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blankenship et al or Brown '051, in view of Ogden, Sr. et al. Both Brown and Blankenship et al teach the claimed plasma torch control selector but do not set forth a selector to independently supply gas to the torch in a first position and supply both gas and power in a second position. However, as set forth in Ogden, Sr. et al it is conventional in a MIG torch to use a single selector having a first position to supply only gas to the weld zone, for as long as the operator desires, and then to supply both gas and electrical power to the weld zone in a second position. Note that the third position is a neutral or off position. Use of this type of control leads

to a safer control and more operator freedom (see column 1 in Ogden, Sr. et al). In view of this teaching it would have been obvious to modify the Blankenship et al or Brown system to use a multi position selector to effect separate control of the gas supply relative to the electrical power, to enhance the safety of the torch. Note that the neutral mode claimed merely comprises the off position in Ogden, Sr. et al. Use of first and second springs and spring types as set forth in claim 25,31 and other dependent claims is considered an obvious design choice that the designer would choose dependent on other designer options such as cost, longevity, etc.

Claims 21,31,49,54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blankenship et al or Brown, in view of Ogden, Sr. et al as applied to claims in the preceding paragraph above, and further in view of Dean et al. In view of Dean et al showing that it is conventional to inhibit trigger use when not desired, it would have been obvious to further modify either Blankenship et al or Brown to use a post type trigger lock as claimed, to effect a safer operation of the torch.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 105, 106,108 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kester et al. Note figures 6 and 7 in Kester et al which show parallel guides as per claim 105. As per claim 106 note components 146,148,156 in figure 6.

Claim 107 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Alvord et al. Note use of a single knob, as claimed.

Applicant's arguments with respect to claims 16-32,44-58,73-80,99-108 have been considered but are moot in view of the new ground(s) of rejection.

Note that mechanical movement of the trigger in the basic torch teaches the term "mechanically operate". Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark H Paschall whose telephone number is 703 308-1642. The examiner can normally be reached on 7am - 3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (703) 305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Mark H Paschall  
Primary Examiner  
Art Unit 3742